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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/499,423	07/07/1995	CAREY V. CAMPBELL	MP/84	2478

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 08/499,423	Applicant(s) Campbell et al.
Examiner Brian Pellegrino	Art Unit 3738



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jan 30, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1, 3-33, 35, 42-69, 71-77, 79-88, and 91-97 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1, 3-33, 35, 42-69, 71-77, 79-88, and 91-97 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

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DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/30/02 has been entered.

Claim Objections

2. Claims 46-57 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In claim 46, it is not clear how the recitation of the graft comprising "porous polytetrafluoroethylene" further defines the parent claim because the independent claim (42) already recites in line 1 "a porous polytetrafluoroethylene tube".

Claim Rejections - 35 U.S.C. § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1,3-17,19-31,33,35,42-69, 71-77,79-88,91-97 are rejected under 35 U.S.C. 102(e) as being anticipated by Shannon et al. (5641373). Shannon et al. disclose a tube base made of porous PTFE and is covered by one or more layers of porous PTFE material, col. 2, lines 21-24.

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Shannon also discloses the device has a microstructure of nodes and fibrils, col. 1, lines 19-30. The wall thickness has about 0.1mm, see col.4, lines 51-53. The graft can be anchored via a stent, col. 11, lines 8-14 and also sutured, line 55. Regarding claims 17 and 31, since the graft is inherently capable of expanding to a second circumference, it is fully capable of having a tapered profile upon expansion in a tapered vessel. The limitation recited in claim 1, of applying internal pressure up to a second circumference such that the tube “limits further growth in the second circumference to remain substantially unchanged” or in claim 33, “limits further growth to *substantially* the second circumference” fails to distinguish the expansion beyond the second circumference as being different from the first to second circumferential expansion. Therefore, the claim language reads on a further expansion up to the second circumference. The examiner asserts that the claimed physical properties (in this case, recoil) are present in the prior art material to some extent even though they are not explicitly recited. Therefore, the examiner hereby burdens the applicant to show that these properties are not present in the prior art.

5. Claims 1, 3-5, 24-26, 33,35, 86-88,91 are rejected under 35 U.S.C. 102(b) as being anticipated by Della Corna et al. '899. Della Corna discloses a graft of porous PTFE material in a tubular form, col. 3, lines 1-6. The limitation recited in claim 1, of applying internal pressure up to a second circumference such that the tube “limits further growth in the second circumference to remain substantially unchanged” or in claim 33, “limits further growth to *substantially* the second circumference” fails to distinguish the expansion beyond the second circumference as being different from the first to second circumferential expansion. Therefore, the claim language

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reads on a further expansion up to the second circumference. The examiner asserts that the claimed physical properties (in this case, recoil) are present in the prior art material to some extent even though they are not explicitly recited. Therefore, the examiner hereby burdens the applicant to show that these properties are not present in the prior art.

6. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shannon et al. '899 in view of Hughes et al. (4728328). Shannon et al. is explained supra. However, Shannon does not disclose a tube that is branched with three ends. Hughes et al. teach a tubular prosthesis that is branched with three ends, Fig. 12. It would have been obvious to one of ordinary skill in the art to use the branched tubular form as taught by Hughes with the prosthesis of Shannon in a vessel such as the trachea requiring replacement to the two bronchii.

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Della Corna et al. '899 in view of Hughes et al. (4728328). Della Corna is explained supra. However, Della Corna does not disclose a tube that is branched with three ends. Hughes et al. teach a tubular prosthesis that is branched with three ends, Fig. 12. It would have been obvious to one of ordinary skill in the art to use the branched tubular form as taught by Hughes with the prosthesis of Della Corna in vessel such as the trachea requiring replacement to the two bronchii.

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Response to Arguments

8. Applicant's arguments filed 1/30/02 have been fully considered but they are not persuasive. Regarding the Della Corna reference, it should be noted that in claims 1 and 33, the use of "substantially unchanged" and "to substantially the second circumference" in which the tube itself is recited to provide this capability is terminology of relative degree, which has no basis of comparison. For this reason, it is considered broad and relatively unlimiting. There is no evidence or admission by applicant that the Della Corna graft does not have a second circumference that remains "substantially" unchanged, just that the graft is made in a different way.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 9am to 6:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for this group is (703) 308-2708.

Any inquiry of a general nature or relating to the status of this application or proceedings should be directed to the group receptionist whose telephone number is (703) 308-0858.

Brian E. Pellegrino

April 8, 2002


Paul Prebilic
Primary Examiner
TC 3700, AU 3738